

derstood to be wholly at law. On the allegations and proofs here, the orator might, and might not, be entitled to maintain an action at law for these representations and threats and their consequent damage. But whether he would or not, he is not entitled to maintain a suit in equity merely for an account of such damage. An account might follow, as it does in patent and other cases, if the equitable right to an injunction was made out. There must be some ground for equitable relief before a court of equity will grant any relief. *N. Y. Guaranty Co. v. Memphis Water Co.* 106 U. S. 205; S. C. 2 Sup. Ct. Rep. 279. No ground for such relief is claimed here, except the right to an injunction; and no ground for an injunction appears, for nothing a court of equity would prevent is shown to be impending.

Let there be a decree dismissing the bill of complaint, with costs.

CONSOLIDATED ELECTRIC LIGHT CO. *v.* BRUSH-SWAN ELECTRIC
LIGHT CO.

(Circuit Court, S. D. New York. June 10, 1884.)

PATENT—PLEADING—MULTIFARIOUSNESS—INFRINGEMENT OF SEPARATE AND DISTINCT PATENT

Upon the alleged infringement of five distinct patents by the use of one machine, each of the five inventions being capable of separate use independent of the others, the trial as to the validity of each patent, and the infringement as well, must be separate from trials as to the validity and infringement of the others, and upon distinct issue as to each.

In Equity.

Amos Broadnax, for orator.

William C. Witter, *Eugene H. Lewis*, and *Samuel A. Duncan*, for defendant.

WHEELER, J. This is an amended bill brought upon five different patents,—one for an electric lighting system, one for an improved regulator for electric lights, one for an improvement in electric lamps, one for an improvement in carbons for electric lights, and one for an improvement in the treatment of carbons for electric lights,—and is demurred to for multifariousness. The bill alleges that the patented inventions are capable of being used conjointly; that the orator makes, uses, and sells conjointly, as parts of the same electric lighting system, each and all of said inventions in some essential and material parts thereof; that the defendant is infringing each and all of these patents by making, selling, and using each and all of said inventions conjointly, in a system of electric lighting, the same substantially as that of the orator. The titles of the patents, as well as the patents themselves, of which proft is made, show that these inventions may be used separately, and operate independently, with respect to each

other. Any of them might be infringed without infringing any of the others. The trial of the validity of each, and of the infringement of each, must be separate from that of the others, upon distinct issues as to each. The facts may be proved by the same witnesses, but, if so, it will be on account of identity of persons in connection with the subject rather than because of the sameness of the issues involved in the subject. That they are used in the same system does not change the nature of the issues to be tried. They are distinct parts of the system. Each patent is for a distinct machine, or process, or manufacture, and must stand or fall as such; and the infringement of each must or may be a separate trespass. The bill apparently covers as many causes as there are patents, when it should cover but one. *Hayes v. Dayton*, 18 Blatchf. 420; S. C. 8. FED. REP. 702.

The demurrer is sustained and the bill adjudged insufficient.

UNTERMEYER v. JEANNOT and others.

(Circuit Court, S. D., New York. June 6, 1884.)

PATENT LAW—DESIGN—FIGURES IN RELIEF—PHOTOGRAPH.

The prominent claim in a patent design being figures in relief, a photograph of the design, since it does not show the relief, does not sufficiently describe the design in the absence of a minute description in the specifications.

In Equity.

Rowland Cox, for orator.

Birdseye, Cloyd & Bayless, for defendants.

WHEELER, J. This suit is brought upon design patent No. 12,485, dated September 20, 1881, and granted to the orator for a watch-case. The design consists in the representation of a locomotive engine and tender upon a railroad track, with ornamental plants in the foreground, the whole surrounded by a ring of dots and an ornamental border. There are two claims: one, for the engine and tender on the track, and ornamental plants; and the other, for the same, surrounded by the ring of dots and ornamental border. An accompanying photograph of a watch-case shows the style of locomotive, tender, and track, the form of the plants, the size and frequency of the dots, and the characteristics of the border; but none of these are described in the specification or claims, except by name. The engine and tender and some of the other parts are said to be shown in relief; and the alleged infringement shows the same in relief. There were watch-cases before having representations of locomotives and tenders on railroad tracks, surrounded by wreaths and ornamental borders and rings of dots, and engines with flowers in the foreground surrounded by scroll-work and borders, but none with such work in